

4

Supreme Court, U.S.
FILED
FEB 20 1998
OFFICE OF THE CLERK

No. 97-501

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

RANDALL RICCI,

Petitioner,

v.

VILLAGE OF ARLINGTON, HEIGHTS
A MUNICIPAL CORPORATION,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOINT APPENDIX

KENNETH N. FLAXMAN
122 South Michigan Avenue
Suite 1850
Chicago, Illinois 60603
(312) 427-3200

Counsel for Petitioner

JEFFREY EDWARD KEHL*
ROBERT C. YELTON III
55 West Wacker Drive, Suite 1000
Chicago, Illinois 60601
(312) 704-4400

Counsel for Respondent

*Counsel of Record

PETITION FOR CERTIORARI FILED SEPTEMBER 17, 1997
CERTIORARI GRANTED JANUARY 9, 1998

8-5 PP

INDEX

Relevant Docket Entries	1
Complaint	3
Answer to Complaint	6
Defendants' Motion for Summary Judgment	13
Affidavit of Robin Ward	15
Deposition of John Fellmann	17
Deposition of Jerome Lehnert	35
Deposition of Andrew Whowell	47
Plaintiff's Local Rule 12(n) Statement	77
Opinion of the District Court	Pet.App. 11
Opinion of the Court of Appeals	Pet.App. 1
Judgment of the Court of Appeals	Pet.App. 10

RELEVANT DOCKET ENTRIES

12/29/94	Complaint filed
2/24/95	Answer by defendants Arlington Hts IL, Andrew Whowell, Jerome Leonard to complaint
7/21/95	Motion by defendants Arlington Hts IL, Andrew Whowell, Jerome Leonard for summary judgment
8/17/95	Memorandum by plaintiff in opposition to motion for summary judgment; plaintiff's Local Rule 12(n) Statement
11/7/95	Memorandum, Opinion, and Order
11/7/95	Minute Order of 11/7/95 by Hon. Elaine E. Bucklo: Defendants' motion for summary judgment is denied in part and granted in part. The motion is denied with respect to count I and granted on counts II and III. Enter memorandum opinion and order.
12/8/95	Minute Order of 12/8/95 by Hon. Elaine E. Bucklo: Status hearing held. Defendant has until 01/31/96 to take the depositions of the three individuals referred to in court. Final pretrial order is due by 3/13/96. Response to any motions in limine will be due within 14 days after the filing of the pretrial order. Parties to submit one set of jury instructions with objections, if any. Objections to any exhibits must be documented with detailed reasons. Pretrial conference is set for 06/11/96 at 4:00p.m. This order is entered nunc pro tunc

12/07/95.

- 4/12/96 Stipulation of dismissal.
- 4/16/96 Minute Order of 4/16/96 by Hon. Elaine E. Bucklo: Pursuant to stipulation of dismissal, count I of the complaint is hereby dismissed with prejudice.
- 4/17/96 Minute Order of 4/17/96 by Hon. Elaine E. Bucklo: Count one of the complaint having been dismissed pursuant to stipulation, pretrial conference set for 6/11/96 is vacated. Enter judgment pursuant to the memorandum opinion and order dated 11/7/95 in favor of the defendants and against the plaintiff. Any pending motion in this case is terminated as moot.
- 4/17/96 ENTERED JUDGMENT [Entry date 04/18/96]
- 5/15/96 NOTICE OF APPEAL by plaintiff from orders entered 11/07/95 and 04/17/96

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RANDALL RICCI,

Plaintiff,

No. 94 C 7732

v.

VILLAGE OF ARLINGTON HEIGHTS
A MUNICIPAL CORPORATION,
ANDREW WHOWELL and JEROME LEONARD

*Defendants.***COMPLAINT**

Plaintiff, by counsel, alleges as follows:

1. This is a civil action arising under 42 U.S.C. §1983. The jurisdiction of this Court is conferred by 28 U.S.C. §1343 and 28 U.S.C. §1367.
2. Plaintiff Randall Ricci is a resident of the Northern District of Illinois.
3. Defendant Arlington Heights, Illinois is an Illinois municipal corporation.
4. Defendants Andrew Whowell and Jerome Leonard were at all times relevant acting under color of their authority as police officers of Arlington Heights, Illinois.

FACTS

5. In 1994, plaintiff was the principal of Rudeway Enterprises, an Illinois corporation involved in the telemarketing industry and professional events in the premises located at 8½ Dunton in Arlington Heights, Illinois.
6. At about 3:00 p.m. on April 19, 1994, defendants Whowell and Leonard, acting under color of their authority of Arlington Heights police officers, entered

the above described business premises.

7. Defendants Whowell and Leonard did not have a warrant to search the above referred premises.
8. After entering the above referred premises, and without lawful consent, defendants Whowell and Leonard rummaged through plaintiff's confidential papers and entered non-public areas of the workplace.
9. After rummaging through plaintiff's papers and effects, defendants Whowell and Leonard spoke with plaintiff and asked him if he had a Arlington Heights business license. When plaintiff responded that he was not sure if he had a license, defendants placed plaintiff Ricci under arrest and transported him to a police station.
10. At all times relevant, there has not been any ordinance, rule, or regulation or of the Village of Arlington Heights of the State of Illinois requiring plaintiff or Rudeway Enterprises to possess a Village of Arlington Heights business license.
11. At all times relevant, neither defendant Whowell nor defendant Leonard had any lawful basis to arrest plaintiff Ricci.
12. Following his arrival at the police station, plaintiff Ricci was detained for several hours before being released on his own recognizance and being charged with a violation of Section 9-201 of the Arlington Heights Village Code. This charge was dismissed at plaintiff's initial court appearance on May 17, 1994.
13. **CLAIM I: FOURTH AMENDMENT UNLAWFUL SEARCH** In searching through plaintiff's papers without a warrant, defendants defendants Whowell and Leonard caused plaintiff to be deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States.

14. **CLAIM II: FOURTH AMENDMENT UNLAWFUL ARREST** In arresting plaintiff without probable cause, defendants Whowell and Leonard caused plaintiff to be deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States.
15. **CLAIM III: MUNICIPAL LIABILITY** The actions of defendants Whowell and Leonard in placing plaintiff under arrest for violation of a municipal ordinance that did not involve a breach of the public peace were undertaken in accordance with a policy of the Village of Arlington Heights authorizing its police officers to make a full custodial arrest for violations of any ordinance. This policy is contrary to the Fourth Amendment to the Constitution of the United States.
16. As the direct and proximate result of defendants' wrongful actions, and of defendant Arlington Heights' unconstitutional policy, plaintiff was deprived of his privacy, deprived of his liberty, required to appear in court to answer groundless charges, and subjected to emotional distress
17. Plaintiff hereby demands trial by jury.

WHEREFORE plaintiff prays that judgment be entered in his favor and against defendants in an amount in excess of fifty thousand dollars.

/s/ Kenneth N. Flaxman
KENNETH FLAXMAN
 122 South Michigan Avenue
 Chicago, Illinois 60603

NOEL T. WROBLEWSKI
 1750 West Haddon Avenue, Suite 1
 Chicago, Illinois 60622

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[title omitted in printing]

ANSWER TO COMPLAINT AT LAW

NOW COME the Defendants, the VILLAGE OF ARLINGTON HEIGHTS, a Municipal Corporation (incorrectly named herein as Arlington Heights, Illinois), ANDREW WHOWELL and JEROME LEHNERT (incorrectly named herein as Jerome Leonard), by their attorneys, DOWD & DOWD, LTD., and for their Answer to the Plaintiff's Complaint state as follows, to-wit:

1. This is a civil action arising under 42 U.S.C. §1983. The jurisdiction of this Court is conferred by 28 U.S.C. §1343 and 28 U.S.C. §1367.

ANSWER: The Plaintiff seeks to assert a cause of action under 42 U.S.C. 1983. The jurisdiction of this court for actions brought under §1983 is conferred by 28 U.S.C. §1343. To the extent that there are any viable and legitimate state law causes of action, 28 U.S.C. §1367 provides for this court's jurisdiction over the same. However, in the event that all federal claims shall be disposed of, it is inappropriate for this court to maintain jurisdiction over any state law claims under 28 U.S.C. §1367.

2. Plaintiff Randall Ricci is a resident of the Northern District of Illinois

ANSWER: Admitted.

3. Defendant Arlington Heights, Illinois is an Illinois municipal corporation.

ANSWER: The Village of Arlington Heights is a Municipal corporation incorporated under the laws of the State of Illinois. The Defendant Village, however, denies that "Arlington Heights, Illinois" is an Illinois Municipal Corporation.

4. Defendants Andrew Whowell and Jerome Lehnert were at all times relevant acting under color of their authority as police officers of Arlington Heights, Illinois.

ANSWER: The Defendants Andrew Whowell and Jerome Lehnert were acting within the scope of their authority as police officers of the Village of Arlington Heights, a Municipal Corporation. The remaining allegations contained in rhetorical paragraph 4 of the Plaintiff's Complaint are denied.

5. In 1994, plaintiff was the principal of Rudeway Enterprises, an Illinois corporation involved in the telemarketing industry and professional events in the premises located at Sk Dunton in Arlington Heights, Illinois.

ANSWER: The Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 5 of the Plaintiff's Complaint. As such, those allegations are deemed denied. The Defendants do, however, admit that the Plaintiff was operating a business in the premises located at 8½ Dunton in Arlington Heights, Illinois.

6. At about 3:00 p.m. on April 19, 1994, defendants Whowell and Lehnert, acting under color of their authority of Arlington Heights police officers, entered the above described business premises.

ANSWER: The Defendants admit that at or about 3:00 p.m. on April 19, 1994, the Defendants, Whowell and

Lehnert, acting within the scope of their authority as police officers for the Village of Arlington Heights, a Municipal Corporation, entered the premises located at 8½ Dunton in Arlington Heights, Illinois. The Defendants deny the remaining allegations contained in rhetorical paragraph 6 of the Plaintiff's Complaint.

7. Defendant Whowell and Lehnert did not have a warrant to search the above referred premises.

ANSWER: The Defendants admit that the Defendants Whowell and Lehnert did not have a warrant to search the premises located at 8½ Dunton in Arlington Heights, Illinois. The Defendants submit that they did not need a search warrant to enter the premises.

8. After entering the above referred premises, and without lawful consent, defendants Whowell and Lehnert rummaged through plaintiff's confidential papers and enter non-public areas of the workplace.

ANSWER: Denied.

9. After rummaging through plaintiff's papers and effects, defendants Whowell and Lehnert spoke with plaintiff and asked him if he had an Arlington Heights business license. When plaintiff responded that he was not sure if he had a license, defendants placed plaintiff Ricci under arrest and transported him to a police station.

ANSWER: The Defendants deny rummaging through the plaintiff's papers and effects. The Defendants admit that the Defendants Whowell and Lehnert spoke with the Plaintiff and asked if he had an Arlington Heights business license. The Defendants deny that the Plaintiff responded that he was not sure if he had a license. The Defendants admit that the Defendants Whowell and

Lehnert placed the Plaintiff under arrest and transported him to the Village of Arlington Heights police station.

10. At all times relevant, there has not been any ordinance, rule, or regulation or of the Village of Arlington Heights of the State of Illinois requiring plaintiff or Rudeway Enterprises to possess a Village of Arlington Heights business license.

ANSWER: Denied. At the time of the offense, April 19, 1994, Ch. 9-201 of the Village of Arlington Heights Municipal Code made it unlawful for any person to conduct, engage in, maintain, operate, carry on or manage a business, occupation or activity, without first having obtain a license to do so.

11. At all times relevant, neither defendant Whowell nor defendant Lehnert had any lawful basis to arrest plaintiff Ricci.

ANSWER: Denied.

12. Following his arrival at the police station, plaintiff Ricci was detained for several hours before being released on his own recognizance and being charged with a violation of Section 9-201 of the Arlington Heights Village Code. This charge was dismissed at plaintiff's initial court appearance on May 17, 1994.

ANSWER: The Defendants deny that the Plaintiff was detained for several hours before being released on his own recognizance. The Defendants admit that the Plaintiff was charged with a violation of §9-201 of the Village of Arlington Heights Municipal Code. The Defendants further admit that this charge was dismissed at the Plaintiff's initial court appearance on

May 17, 1994 after it was established that the Plaintiff's wife had, subsequent to the Plaintiff's arrest, procured the license required under the Village of Arlington Heights Municipal Code.

13. **CLAIM I: FOURTH AMENDMENT UNLAWFUL SEARCH** In searching through plaintiff's papers without a warrant, defendants Whowell and Lehnert caused plaintiff to be deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States.

ANSWER: Denied.

14. **CLAIM II: FOURTH AMENDMENT UNLAWFUL ARREST** In arresting plaintiff without probable cause, defendants Whowell and Lehnert caused plaintiff to be deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States.

ANSWER: Denied.

15. **CLAIM III: MUNICIPAL LIABILITY** The actions of defendants Whowell and Lehnert in placing plaintiff under arrest for violation of a municipal ordinance that did not involve a breach of the public peace were undertaken in accordance with a policy of the village of Arlington Heights authorizing its police officers to make a full custodial arrest for violations of any ordinance. This policy is contrary to the Fourth Amendment to the Constitution of the United States.

ANSWER: Denied.

16. As the direct and proximate result of defendants' wrongful actions, and of defendant Arlington Heights' unconstitutional policy, plaintiff was deprived of his privacy, deprived of his liberty, required to appear in court to answer groundless charges, and subjected to emotional distress.

ANSWER: Denied.

17. Plaintiff hereby demands trial by jury.

ANSWER: The Plaintiff's request for trial by jury is not a proper factual allegation within the body of a Complaint. Accordingly, the Defendants recognize the right of the Plaintiff to seek trial by jury, but plead no response thereto.

WHEREFORE, the Defendants respectfully request this court to enter judgment against the Plaintiff and in favor of the Defendants and to further order the assessment of costs, and attorney's fees against the Plaintiff.

AFFIRMATIVE DEFENSES

NOW COME the Defendants, the VILLAGE OF ARLINGTON HEIGHTS, a Municipal Corporation (incorrectly sued as Arlington Heights Illinois), ANDREW WHOWELL and JEROME LEHNERT, and submit the following Affirmative Defenses in response to the Plaintiff's Complaint.

The Defendants submit that the Plaintiff's Complaint fails to state a cause of action under the Fourth Amendment as made applicable by virtue of the Fourteenth Amendment to the Constitution of the United States. In particular, the Defendants submit that the Defendants did not conduct a search of the plaintiff's papers in violation of the Fourth Amendment, did not arrest the Plaintiff without probable cause, and that the Village of Arlington Heights did not

enact, implement, or enforce any policy regarding the use of full custodial arrests that is contrary to the Fourth Amendment.

WHEREFORE, the Defendants, the VILLAGE OF ARLINGTON HEIGHTS, a Municipal Corporation, ANDREW WHOWELL and JEROME LEHNERT, respectfully request this court to enter judgment against the Plaintiff and in favor of the Defendants and to further order the assessment of costs, and attorney's fees against the Plaintiff.

/s/ Jeffrey E. Kehl
Attorney for Defendant

Jeffrey E. Kehl
DOWD & DOWD, LTD.
55 West Wacker Drive
Chicago, Illinois 60601-1699
(312) 704-4400

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[title omitted in printing]

MOTION FOR SUMMARY JUDGMENT

NOW COME the Defendants, VILLAGE OF ARLINGTON HEIGHTS, a Municipal Corporation, ANDREW WHOWELL and JEROME LEHNERT, by their attorneys, DOWD & DOWD, LTD., and, pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves this court to enter summary judgment on claims 1, 2, and 3 of the Plaintiff's Complaint on the basis that there is no genuine issue of material fact and the Defendants are entitled to judgment as a matter of law. In support of this Motion for Summary Judgment, the Defendants submit the following pleadings, papers, affidavits, and deposition transcripts for the court's consideration:

1. The Plaintiff's Complaint filed December 29, 1994.
2. The Defendants' Answer filed February 24, 1995.
3. Statement of Material Facts Not in Dispute.
4. Affidavit of Robin Ward, Assistant Village Attorney for the Village of Arlington Heights.
5. Transcript of the deposition of Randall Ricci taken April 28, 1995.
6. Transcript of deposition of Jerome Lehnert taken May 23, 1995.
7. Transcript of deposition of Andrew Whowell taken May 23, 1995.
8. Transcript of deposition of John Fellmann taken June 15, 1995.

9. Memorandum of Law in support of Motion for Summary Judgment filed contemporaneously herewith.

WHEREFORE, based upon the foregoing submissions, the Defendants respectfully request this court to enter summary judgment in their favor on Claims I, II, and III of the Plaintiff's Complaint, and to grant all other relief just and proper in the premises.

/s/ Jeffrey E. Kehl
an attorney for defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[title omitted in printing]

AFFIDAVIT OF ROBIN WARD

I, ROBIN WARD, having been duly deposed and upon my oath state as follows:

1. I am the Assistant Village Attorney for the Village of Arlington Heights, Illinois.
2. I am familiar with and have access to all valid and duly enacted ordinances of the Village of Arlington Heights. From my familiarity with the valid and properly enacted ordinances of the Village of Arlington Heights, I can state that the following ordinances were in full force and effect on April 19, 1994:

Section 14-3001 Licensing of Businesses The places of businesses hereinafter enumerated in Section 14-3002 shall be licensed in accordance with the provisions of this Code. The license fee for each business shall be that set forth in Section 14-3002. All businesses so licensed shall comply with the general licensing provisions of Chapter 9 of this Code, and shall comply with all ordinances of the Village of Arlington Heights relating to the use and occupancy of the premises in which such businesses are located. The Village Manager may direct appropriate Village officers to make such inspections of the places of business of said licensees as he may deem necessary from time to time for the purpose of enforcing all the applicable ordinances of the Village of Arlington Heights. Such inspections shall be in addition to those required under other provisions of the ordinances of the Village and other sections of this

Code.

Section 14-3002 Licenses Businesses and Fees (a) The license fees for the businesses listed below shall be determined based on the size of the business operation in accordance with the following standardized standardized calculation fee schedule:

\$100.00	under 1,000 square feet*
\$150.00	1,001-5,000 square feet*
\$300.00	5,001-12,000 square feet*
\$600.00	12,001 square feet* and over

(*square feet = the total building square footage including retail areas and indoor storage areas)

Any and all business enterprises not named elsewhere in this Code.

Section 9-201 License required. Except as otherwise provided in Section 9-202 of this Code [exemption for double licensing], it shall be unlawful for any person to conduct, engage in, maintain, operate, carry on or manage a business, occupation or activity, either by himself or through an agent, employee or partner, for which a license is required by any provision of this Code without first having obtained a license for such business, occupation or activity. Any person violating this section shall be fined not less than Five Dollars (\$5.00) nor more than Five Hundred Dollars (\$500.00) for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Further your affiant sayeth naught.

/s/ Robin Ward

Assistant Village Attorney

[jurat omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[title omitted in printing]

Deposition of John Fellmann

JOHN FELLMANN, called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. FLAXMAN:

[3] Q. Could you state your name and spell your last name, please?

A. John Fellmann, F E L L M A N N.

Q. What's your business or occupation?

A. I'm a commander of police.

Q. And by whom are you employed?

A. The Arlington Heights Police Department.

Q. For how long have you been employed by the Arlington Heights Police Department?

A. 23 years.

Q. And how long have you been a police officer?

A. 23 years.

Q. How old are you?

A. 48.

* * * [9]

Q. Have you ever heard of someone named Randall Ricci?

A. Yes.

Q. When is the first time you heard of Mr. Ricci?

A. April of 1994.

Q. How did you have occasion to hear about Mr. Ricci?

A. One of the investigators in my command had arrested Mr. Ricci for operating a business without a license.

Q. Do you know the name of that investigator?

A. Andrew Whowell.

Q. Could you spell Whowell?

A. W H O W E L L.

Q. Was that the first time you had heard about Mr. Ricci?

A. Yes.

Q. Had you heard about [10] Mr. Ricci's business before the date that Mr. Whowell told you that Mr. Ricci had been arrested?

A. Yes.

Q. When had you first heard about Mr. Ricci's business?

A. Several weeks earlier.

Q. How had you heard about his business?

A. Several businessmen in the community had called the office of the chief or the deputy chief, those calls in turn transferred to me. These business people were asking questions and complaining about some telemarketing practices that they felt were representative of the Arlington Heights Police Department.

Q. Do you remember the names of anybody who called with these concerns?

A. No.

Q. Did you speak to any of these people?

A. Yes.

Q. How many of these people did you speak to?

A. Approximately a half a dozen.

Q. Did you make any notes as you were having any of these conversations?

A. No.

Q. Did you write any reports as the result — or make any — strike that. Did you write any reports which contain [11] information that you learned in any of these conversations?

A. No.

Q. What, if anything, did you do as a result of the concerns that these businessmen had shared with you?

A. I had had a conversation with Investigator Whowell in April indicating that we had a business, a telemarketing business in town here, and asked him to check and see if they were properly licensed.

Q. Now, let's go back to the questions about the telemarketing firm that these businessmen had shared with you. What — do you recall any of the questions that any of these businessmen had?

A. To the effect they wanted to know if the Arlington Heights Police was conducting any sort of a fund drive.

Q. And was the Arlington Heights Police conducting a fund drive?

A. No.

Q. Did they tell you why they wanted to know that?

[12] A. That they received phone calls or they were being asked to contribute money to an organization that was alluding to an affiliation with the Arlington Heights Police Department.

Q. Did you ever — well, strike that. Was there ever any investigation to find out if, in fact, there was an organization that was making phone calls conveying the impression that they were soliciting money for the Arlington Heights

Police Department?

A. Phone call, no.

Q. And what kind of complaints about the practices did you receive from any of those businesses?

A. They were complaining about high pressure to contribute. They were not accustomed to contributing money on behalf of the Arlington Heights Police because that is not our practice. This was something new that they weren't familiar with.

Q. Now, when you asked Mr. Whowell to check to see if this telemarketing firm was properly licensed, what kind of license were you referring to?

[13] A. Business license.

Q. Back in this time, April of 1994, was there any requirement of which you were aware in Arlington Heights that a telemarketing firm have a business license?

A. All businesses require a business license.

Q. Is there a — well, strike that. Does the village, to your knowledge — well, strike that. Is a business license something you get by filling out a form and paying a fee or does the village exercise discretion about who can get a business license and who can't get a business license?

A. You fill out a form, pay the fee, and upon approval license is issued.

Q. So there's no — am I correct that there's no investigation to see if the business is a moral business before a business license is issued in Arlington Heights?

A. Yes, there is.

Q. Yes there is what?

A. Yes, there is an investigation.

[14] Q. What kind of investigation is there?

A. For business licenses, usually it is just a computerized criminal history check of the principals of the

organization.

Q. Well, let's assume — if there was a telemarketing firm that was saying that it was soliciting funds for the Arlington Heights Police Department, would that have been against the law in Arlington Heights back in April of '94?

A. To operate without a license?

Q. Well, let's assume that you have a telemarketing firm that has an Arlington Heights business license that's making phone calls giving the impression that they're soliciting funds on behalf of the Arlington Heights Police Department. Would that have been illegal?

A. I'm not aware if that would be illegal.

Q. What about the same telemarketing firm that had a license, an Arlington Heights business license, that was using high pressured tactics in phone calls soliciting funds, would that have been illegal in Arlington Heights?

A. I'm sorry. Would you repeat the question?

[15] Q. If you have a telemarketing firm in Arlington Heights that has a business license whose telemarketers are using high pressure tactics over the phone, would that have been illegal?

MR. KEHL: Do you know what he means by high pressure tactics?

THE WITNESS: No, I don't.

BY MR. FLAXMAN:

Q. Of the type that had been complained to you by those business reps.

A. No, I don't know.

Q. Why was it that you asked Investigator Whowell if this telemarketing business about which you had the complaints was properly licensed?

A. Because we had received these reports about a telemarketing firm with whom we weren't familiar, and before we went out and talked to him, as a matter of course, we often check to see if they are licensed.

Q. Do you know what, if anything, Investigator Whowell did to see if the company, if the telemarketing firm was licensed?

A. He checked with our building department who issues the licenses to see if they had a record [16] on file of having issued one.

Q. Were you informed of the results of that inquiry?

A. Yes.

Q. Who informed you?

A. I believe Andy Whowell.

Q. When was that?

A. In April of '94.

Q. And did you have any further conversation about this telemarketing firm at that time with Mr. Whowell after he told you about the — about it did not appear to be licensed?

A. I instructed him to check with the principals of the organization should he ever have occasion to be over there.

Q. Did you know Mr. Whowell was going to be going over to that telemarketing firm?

A. Yes.

Q. When did you know that?

A. About the same time period.

Q. How did you learn that he was going over there?

A. He had advised me that he was going to be executing an arrest warrant for Mr. Dugo —

[17] Q. Is that D U G O?

A. Correct. (Continuing) — in regards to a theft complaint that he had worked on earlier.

Q. And did you tell him that while you're over there check to see if they have the license?

A. Yes.

Q. Did you tell him what to do if he discovered that the telemarketing firm did not have a business license?

A. Yes.

Q. What did you tell him to do?

A. Take the appropriate action.

Q. And did you tell him what the [18] appropriate action was?

A. No.

Q. Well, what did you understand the appropriate action — no. What did you mean when you said take the appropriate action?

A. To an experienced investigator, the appropriate action would be whatever he deems appropriate at the time.

Q. Well, what did you believe the appropriate action would be?

A. If we have a violation of ordinance, the suspect is arrested, brought to the station, charged, bonded, and given a court date.

Q. Now, if you — in Arlington Heights, if you park next to — in a handicapped parking space, is that a violation of a municipal ordinance?

A. It is.

Q. Are people who park in a handicapped parking space arrested, charged, and bonded?

A. No.

Q. Why is that?

A. The protocol is the issuance of a parking ticket.

Q. Are there some municipal ordinances for which the established protocol does not — does not involve full custodial arrest?

A. Parking violations.

Q. Any other ordinance violations of which you're aware?

A. Some liquor violations.

Q. Could you give me some examples?

A. Someone over the age of 21 who might possess alcohol in one of the parks could be issued [19] a citation.

Q. Are there any other ordinances other than parking violations and some liquor violations that are — that did not result in a full custodial arrest?

A. I can't think of any.

Q. This conversation with Mr. Whowell where he told you he was going out to the telemarketing firm, was that the same day that Mr. Ricci was arrested?

A. I don't recall.

Q. Did you speak with Mr. Whowell after he went out to — after he arrested Mr. Ricci?

A. Yes.

Q. Did you speak to Mr. Whowell while he was at the scene at the telemarketing firm?

A. No.

Q. When you spoke with — when you spoke with him after he arrested Mr. Ricci, was that the same date of the arrest?

A. Yes.

Q. Where did the conversation take place?

A. In the detective division office.

Q. Was anybody else present during the [20] conversation?

A. Probably.

Q. Well, who else was there?

A. I don't recall.

Q. Was anybody else taking part in the conversation?

A. I don't recall.

Q. What did Mr. Whowell say?

A. That he had brought in Mr. Ricci for the violation of the village ordinance.

Q. Where was Mr. Ricci at this time?

A. In the building.

Q. When you told Mr. Whowell to check to see if this telemarketing concern was properly licensed, were you trying to stop the telemarketing firm from causing the kind of complaints you had received about them?

A. Yes.

Q. Why was that?

A. Because it was negatively reflecting upon the image of the department.

* * *

[21] Q. He's very tall. After Mr. Ricci was arrested, did you have any conversations with anybody about the — about Mr. Ricci's telemarketing concern and their tactics?

[22] A. I apprised my superior officers.

Q. Who, who did you tell?

A. Captain Schenkel.

Q. What did you tell him?

A. That the parties involved in the telemarketing had been charged with a violation of the village ordinance.

Q. What did Captain Schenkel say?

A. "Fine."

Q. And when did you have that conversation?

A. I believe it was that day.

Q. Had Captain Schenkel told you about these complaints?

A. No.

Q. How did the complaints from the citizens get routed to you?

A. The switchboard operator to the secretary for either the chief or the deputy — would transfer these calls down.

Q. Had you had any conversations with your superiors?

A. I believe I told Captain Schenkel that I had received these complaints and we were looking into it.

[23] Q. What did he say?

A. "Fine."

Q. Is there — well, is there a particular ordinance in Arlington Heights that requires that all businesses be licensed?

A. Yes.

Q. Do you know what provision that is?

A. I recall it's in Chapter 9 of the Municipal Code, but which one I don't immediately recollect.

Q. Let me show you what's previously been marked as Plaintiff's Exhibit 2 for ID as of 5/23/95. Does that look —

A. Yes.

Q. Okay. Is that a copy of the ordinances of the Village of Arlington Heights?

A. It is.

Q. Is that Section 9-201 the section that you believe requires all businesses to have licenses?

A. Yes.

Q. And as far as you know, do all businesses in Arlington Heights have licenses?

[24] A. Do all?

Q. Right. Excuse me?

A. I don't believe they all do.

Q. Other than Mr. Ricci, do you know anyone else in Arlington Heights who has been arrested for not having a business license?

A. I know of other instances. The names don't come to me immediately.

Q. Have there been any arrests in 1955 for not having a business license?

A. Yes.

Q. How many?

A. I'm aware of one.

Q. What was that business doing?

A. He was soliciting for money on the street corner.

Q. Panhandling?

A. Yes.

Q. And is that — was he arrested for not having a license under 9-201?

A. I believe so.

Q. Can you think of — well, was anybody else, to your knowledge, arrested in 1995 for not having a business license?

[25] A. Not to my knowledge.

Q. How about 1994 other than Mr. Ricci?

A. I have a recollection that somebody was, but who it was, I can't —

Q. Do you recall what their business was?

A. No.

Q. 1993?

A. Yes.

Q. And —

A. But, again, no recollection.

Q. Is there any plan or practice that the police department follows to check on compliance with the business license requirement?

A. Plan to check on compliance?

Q. Correct.

A. No.

Q. Well, when there's a new business, does the police department visit it to check and see that they have a license?

A. No.

Q. When arrests are made, does the police department in Arlington Heights check to see that the business has a license?

A. Yes.

[26] Q. Is FOP Lodge 80 in Arlington Heights?

A. Yes.

Q. Have you ever been a member of FOP Lodge 80?

A. Yes.

Q. Are you still a member?

A. No.

Q. When did you stop being a member?

A. Approximately 1986.

Q. And why did you stop being a member?

A. I was promoted to the rank of sergeant, and at that time the lodge formed the new bargaining unit and all staff members were excluded from membership in the bargaining

unit.

Q. Has FOP Lodge 80 ever employed telephone solicitors to raise money?

A. Yes.

Q. When was that?

A. I don't know.

Q. Was that when you were a member?

A. I'm sorry?

Q. Was that when you were a member of Lodge 80?

A. It's possible. I can't recall.

[27] Q. Do you know anybody who would know about that?

A. Present and past officers.

Q. Do you remember any problems with the telephone solicitation?

A. There were some complaints, yes.

Q. What kind of complaints were there?

A. That they were representing that they were members of the Arlington Heights Police Department.

Q. We're talking about FOP Lodge 80?

A. Yes.

Q. What kind of complaints were they?

A. That the telemarketing would help themselves as members of the Arlington Heights Police Department.

Q. And were they, in fact, members of the Arlington Heights Police Department?

A. No.

Q. Were there any other problems with FOP Lodge 80 and solicitation?

A. Not that I'm aware of.

Q. Did FOP Lodge 80 come away with bad feelings about telephone solicitation?

[28] A. I can't speak for the lodge.

Q. Did you ever learn that Mr. Ricci's wife bought a business license?

A. Not —

Q. Excuse me?

A. I didn't.

Q. Did you ever learn that Mr. Ricci's company paid for a business license?

A. Yes.

Q. When did you learn that?

A. It was about the first court date, which date escapes me, but about that —

Q. Did you go to court?

A. No.

Q. Who went to court?

A. Andy Whowell.

Q. And how did you learn about what had happened at the first court date?

A. He informed me.

Q. What else did he tell you?

A. That the matter had been dismissed because of compliance.

Q. Were new police officers added to Arlington Heights Police Department in 1994?

[31] A. I don't recall.

Q. When did it become — do you recall when it became a smoke free environment?

A. No, I do not.

Q. For how long has it been the policy about ordinance violation arrests that you described, arresting, charging, has that been the policy of Arlington Heights since the time you

joined the police department?

A. Yes.

MR. FLAXMAN: I have nothing further. Do you have any questions?

MR. KEHL: Yes.

EXAMINATION BY MR. KEHL:

Q. With regard to the local ordinance violation policy of the Village of Arlington Heights with regard to a business that does not have a Village of Arlington Heights business license, can you state why those persons are arrested?

A. For violation of that village ordinance.

Q. Why aren't they just issued a ticket, do you know?

[32] A. We have no instrument designed for citing them in the field. I mean, the manner in which our department is structured is that the complaint is prepared on a document at our station and bond is required if this is a bondable offense.

Q. Is there a set policy or procedure for how an arrest is to be effected for a violation of the Village of Arlington Heights ordinance pertaining to business licenses?

A. No. All arrests are the same.

Q. Are they all effected the same?

A. No. Each circumstance is different.

Q. Okay. Can you explain the difference in how an arrest for violation of this particular village ordinance would be effected differently from, say, a violation of — take a violent felony statute.

A. Officer safety is utmost, so once the arrestee is secured, then we search, they're handcuffed, placed into our car, transported to the station.

Q. Okay. Let's go through that. Why do you perform a search on the arrestee?

[33]

A. For the officer's safety.

Q. Why is the arrestee handcuffed?

A. Both for the officer's safety and for the arrestee's safety so that he can't escape the vehicle while it is in motion.

Q. When the arrestee is transported to the police department, what happens then?

A. He's brought out of the car and into the building, either taken to a lockup or an interview room.

Q. What determines whether the arrestee goes to the lockup or the interview room?

A. Officer's convenience, unless lockup might have somebody in there already, the officer may want to fill out the — in Andy Whowell's case, he's assigned to the investigative unit so the interview rooms are convenient.

Q. How come for something as simple as this ordinance violation they aren't allowed to sit in the lobby of the police department?

A. Because we need to complete our process. That doesn't occur in the lobby. it occurs back in the operation area of the department.

[34] Q. Can't the arrestee sit in the lobby?

A. Not until bond arrives.

Q. This interview room, what are interview rooms for?

A. Interviewing victims, witnesses, suspects.

Q. It's not just solely for arrestees, you would also put victims in there, witnesses?

A. Yes.

Q. The access to the interview room, that's through a door?

A. Yes.

Q. Can you open that door from the outside?

A. No.

Q. Is there a switch on the outside of that door that allows you to be able to open from the inside?

A. No.

Q. Is there a reason for that?

A. For the safety of the individual so he doesn't wander around, for the safety of the officers so the people cannot exit unannounced.

Q. Are you aware of the purpose behind the Village of Arlington Heights' ordinance requiring [35] businesses to be licensed?

MR. FLAXMAN: Object to the form of the question. That assumes that there is such an ordinance.

BY MR. KEHL:

Q. You can go ahead and answer that.

BY THE WITNESS:

A. Okay. I understand it to be so that they can regulate the businesses for the safety and welfare of the community.

Q. Who is "they"?

A. Village administrator.

Q. Is there any particular department of the village administrator that would need this?

A. I would —

Q. Don't guess, if you know.

A. Fire department knows the number of employees; we, the police department, so we know what the parking mode might be in the downtown area, number of employees driving, we factor that in when we compute daily parking requirements in the Central Business District; building department to make sure that business isn't introducing

chemicals in the environment that isn't — a business is not [36] introducing chemicals into an environment that's not capable of handling them. Those are some of the reasons that I know of.

Q. Is it the policy and procedure of the Village of Arlington Heights Police Department to cause an arrest to be effected for violation of the ordinance requiring business licenses when an officer discovers the particular business does not have a license?

A. Yes.

Q. And are the officers of the Village of Arlington Heights Police Department told that all businesses within — or told by the staff, meaning the commanders and deputy chiefs and chiefs or chief, are they told by them that any business operating in the Village of Arlington Heights is required by village ordinance to have a business license issued by the Village of Arlington Heights?

A. Yes.

MR. KEHL: Nothing further.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[title omitted in printing]

Deposition of Jerome Lehnert

JEROME LEHNERT, called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. FLAXMAN:

Q. Could you state your name and spell your last name.

A. Jerome Lehnert, L-e-h-n-e-r-t.

Q. What's your business or occupation?

A. I'm a police officer for the Village of Arlington Heights.

Q. How long have you been a police officer with Arlington Heights?

A. I'm in my 19th year.

Q. How old are you?

A. 42.

Q. What's your present assignment?

A. The criminal investigation bureau.

Q. How long have you been in the criminal investigation bureau?

A. Two and a half years.

Q. What did you do before that?

[4] A. Patrol, traffic.

Q. Back on April 19, 1994, did you have occasion to go to 8½ Dunton or something like that?

MR. KEHL: Dunton.

MR. FLAXMAN: Dunton.

MR. KEHL: Dunton, D-u-n-t-o-n.

BY MR. FLAXMAN:

Q. Dunton?

A. Yes.

Q. Why did you go there?

A. To assist my partner to serve a warrant.

Q. Who had the primary responsibility for serving the warrant?

A. It was my partner's case.

Q. Who was your partner?

A. Investigator Whowell.

Q. When you went there, to 8½ Dunton, did you have § was there any other assignment that you had or that your partner had in addition or aside from serving the warrant?

A. We had been instructed by our lieutenant to check the business, make sure it was a legitimate operation.

[5] Q. When you say we had been instructed § we will take a step back. Your lieutenant, was that Lieutenant Fellman?

A. Correct.

Q. When you say we had been instructed, had Lieutenant Fellman instructed you personally?

A. No.

Q. He had instructed your partner, whose name I don't pronounce as well as you do?

A. Investigator Whowell.

Q. Whowell. Investigator Whowell had shared that assignment with you?

A. Correct.

Q. What did Investigator Whowell tell you about the assignment?

A. There had been a number of calls from citizens that had come into the police department in reference to receiving phone calls from a company that was soliciting funds for police departments. They wanted to know if this company was legitimate.

Q. What did Investigator Whowell tell you your mission was to determine about whether the [6] company was legitimate?

A. We were going to check to see if they were licensed to operate in the village.

Q. Did you check before you went out there or after you went out there or at all? Let me ask the right question. Did you check to see if they were licensed in the village?

A. Yes.

Q. How did you do that?

A. Through the building department.

Q. Did you do that before you went out there?

A. Yes.

Q. Did you do that or did Investigator Whowell do that?

A. Investigator Whowell did that.

Q. He did that and told you what his results were?

A. Correct.

Q. What did he tell you?

A. He indicated that he had done a check through the building department and the building department had no record of this company, Rudeway [7] Enterprises, being licensed to operate in the village.

Q. Now, at that time, April 19, 1994, was there any village ordinance of which you were aware which required that a business of the nature of Rudeway be licensed?

A. Every business that operates in the village has to be licensed.

Q. Is there a particular ordinance of which you are aware which includes that requirement?

A. I don't know the exact ordinance number.

Q. Well, how did you learn that every business has to be licensed?

A. It's common knowledge.

Q. Have you ever arrested any business operator who was not licensed in Arlington Heights?

A. I have been involved in other arrests for operating without a license.

Q. In each of those other arrests that you have been involved, was an LO ticket issued?

A. Yes.

Q. To issue an LO ticket, do you have to bring the person who is being issued a ticket down to the police station?

[8] A. Yes.

Q. Do they get fingerprinted?

A. No.

Q. Do they get photographed?

A. Yes.

Q. Do they have to post bond?

A. Yes.

Q. What other kind of offenses result in an LO ticket?

A. Soliciting without a permit, any of our park violations.

Q. Like littering in the park?

A. Littering in the park, being in the park after dark or drinking in the park, curfew violations.

Q. Is there a dog ordinance in Arlington Heights?

A. Yes.

Q. Do LO tickets get issued for a violation of the dog, whatever it is, ordinance?

A. I'm sure it's a local ordinance violation. I don't know if it specifically goes on a local ordinance ticket. That's handled by our animal wardens.

[9] Q. You have never arrested anybody for letting their dog mess on somebody else's lawn?

A. No, that's handled by our animal wardens.

Q. Is there a list or rule or some kind of written statement somewhere which tells you which ordinance violations get written up on an LO ticket?

A. No.

Q. Parking tickets don't get written up on an LO ticket?

A. No.

Q. Do parking tickets get issued by an Arlington Heights police officer?

A. Yes.

Q. What's that ticket called?

A. It's called a P ticket.

Q. What other kind of ordinance violations get written up on a P ticket?

A. Not having a village sticker, cars blocking the sidewalk, cars parked by § in fire lanes, cars parked in handicap zones, parking violations.

Q. Does P stand for parking?

[10] A. It could.

Q. Well, is there any offense for which a P ticket is issued that doesn't involve parking?

A. I believe some of the animal violations go on P tickets. If you have a stray dog running loose.

Q. Is there any written document of which you are aware which says which violations go on P tickets?

A. I'm sure there is some kind of directive indicating what violations can be written on P tickets.

Q. Back on April 19, 1994, were you involved in transporting Mr. Ricci from 8½ Dunton to the Arlington Heights Police Station?

A. Yes.

Q. Were you involved in the decision that Mr. Ricci would come from 8½ Dunton to the Arlington Heights Police Station?

A. How do you mean was I involved?

Q. Who made that decision?

A. I'd have to say it was a mutual decision between myself and Investigator Whowell.

Q. Why did you believe that Mr. Ricci [11] should be transported from 8½ Dunton to the Arlington Heights Police Station?

A. Well, it had been determined that he did not have a business license. He was going to be issued a local ordinance citation for not having a business license. There is paperwork that needed to be done to reference this charge along with a bond that had to be issued to reference this charge, neither of which we do on the street.

Q. Did you ever learn on April 19, 1994 that Mr. Ricci's wife was down at the Village Hall buying a business license?

A. No, I did not.

Q. Did you ever learn that Mr. Ricci's wife had purchased a business license?

A. I learned after that date that someone had come down to the Village and applied for a business license. I was unaware of who that person was.

Q. How did you learn that?

A. When the court date was coming up, we inquired with the building department as to whether or not this company had obtained the business license, at which time we were given a copy of an [12] application for a license that had been filled out on or about the same date.

Q. After a license is applied for, a business license is applied for, what happens in Arlington Heights?

A. The building department does an inspection of the premises and the fire department does an inspection of the premises.

Q. Do you know if those inspections were ever done of Rudeway Enterprises?

A. One of them was done.

Q. Which one?

A. I'm not 100 percent sure, but I believe it was the fire inspection that was done.

Q. Did you go to court on that case?

A. No, I did not.

Q. Why not?

A. Generally only one officer is needed in court, and since this was Investigator Whowell's case, he went to court on it.

Q. How long did that take to process Mr. Ricci on April 19, 1994?

A. He was with us for probably an hour.

Q. When you say he was with us, was he in [13] your presence that whole hour?

A. I'm talking about from the time that we left 8½ North Dunton until the time that he was released from this station on an I bond, he was with us for about an hour.

Q. From the time you left 8½ Dunton up until the time Mr. Ricci was released on an I bond on April 19, 1994, was Mr. Ricci free to leave?

A. No.

Q. He was under arrest, wasn't he?

A. If you want to call it that.

Q. Was he placed into a room that did not open from the inside when he was at the Arlington Heights Police Station?

A. He was in an interview room.

Q. Is that the kind of room that doesn't open from the inside when the door is closed?

A. Correct.

Q. Did you on April 19, 1994 hear Mr. Whowell make any comment about that it was taking too long to process Mr. Ricci?

A. No.

* * *

[15] Q. Well, when you went to 8½ Dunton, who is the first person you saw when you went into the building there?

A. Some big guy.

Q. Who spoke to him?

A. Investigator Whowell.

Q. Were you close enough to hear what Mr. Whowell said?

A. Uh-huh.

Q. You have to say yes or no for the [16] reporter.

A. Yes.

Q. What did you hear Mr. Whowell say?

A. He asked if we could be directed to Mr. Dugo.

Q. Did Investigator Whowell identify himself as a police officer?

A. Yes.

Q. How did he do that?

A. Verbally plus we carry ID's which were shown to the individual.

Q. You weren't in uniform?

A. No.

Q. What does your ID look like?

A. It's a star, it says Arlington Heights Police and there is a police officers commission card with our photograph on it.

Q. Did you tell the large gentleman or did Investigator Whowell tell the large gentleman why it was you wanted to see Mr. Dugo?

A. No.

Q. Were you directed to Mr. Dugo?

A. Yes.

Q. Did you know Mr. Dugo?

[17] A. Yes, Investigator Whowell did. He had had previous contact with him.

Q. Mr. Dugo was handcuffed when you found him?

A. He was advised that the reason we were there was because a warrant had been issued for his arrest. He was taken into custody at that time and, yes, he was handcuffed.

Q. What happened to Mr. Dugo?

A. We called for a marked squad car to come to the Dunton address. When the squad car arrived, I took Mr. Dugo downstairs to the waiting squad and placed him in the squad at which time Mr. Dugo went to the police department

and I went back up to the office.

Q. Why was it that you didn't transport Mr. Dugo to the police station?

A. We were not yet done with the business that we were attending to at the office.

Q. What other business were you attending to at the office?

A. We were trying to determine if the business itself was licensed within the village, and we were trying to determine if the police [18] organizations that they were § if they were authorized to solicit for the police organizations that they indicated they were soliciting for.

Q. Now, how had you learned § who had indicated they were soliciting for a police organization?

A. Mr. Ricci.

Q. Did you talk with Mr. Ricci before you took Mr. Dugo downstairs § strike that. Had you heard Mr. Ricci say anything before you took Mr. Dugo downstairs?

A. I don't recall at what point Mr. Ricci started talking with us.

Q. Other than seeing Mr. Ricci on April 19, 1994, have you ever seen him after that?

A. No.

Q. Had you ever seen him before that?

A. Not to my knowledge.

Q. Did you ever learn he had been a professional wrestler at one time?

A. No.

Q. When you came back upstairs after getting rid of Mr. Dugo or giving Mr. Dugo to the uniformed officers, where did you go?

[19] A. Over by Investigator Whowell.

Q. Where was Investigator Whowell?

A. By Mr. Ricci.

Q. Where in relation to the front door were those two men?

A. When you walk in the front door, there is a large office area where the employees have their phone stations set up for the calls that they are making for donations. There is another area separate from the main office area, it's like a small office, that's Mr. Ricci's office. When I came back upstairs, Mr. Ricci was in his office and Investigator Whowell was standing at the doorway.

Q. Now, to go from the front door to where you went to near Officer Whowell standing in the doorway, did you speak with anyone?

A. No.

Q. Did you have to go through any other kind of barrier?

A. No.

Q. Did you § how long did you stay outside Mr. Ricci's door before you left?

A. I need a little clarification. When you say how long did I stay outside his door before I [20] left, are you talking at the time when I brought Mr. Dugo downstairs?

Q. You brought Mr. Dugo downstairs, you came back upstairs, you saw Investigator Whowell standing outside of Mr. Ricci's door or in the doorway talking to Mr. Ricci and you went and stood next to Investigator Whowell. How long did you stay there before you left?

A. A few minutes.

Q. Did you say anything during that time?

A. No.

Q. Did you see any three-by-five index cards in the § on the premises?

A. Place was a mess. There was paper everywhere.

Q. Did you read any of the papers that you saw everywhere?

A. I didn't pay any attention.

Q. Did you pick up any of the papers you saw anywhere?

A. No.

Q. Did you see Investigator Whowell pick up any of the papers?

A. No.

MR. FLAXMAN: I have nothing further.

MR. KEHL: We will reserve signature.

FURTHER DEPONENT SAITH NOT.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[title omitted in printing]

Deposition of Andrew Whowell

ANDREW WHOWELL, called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. FLAXMAN:

[3] Q. What's your § state your full name and spell your last name.

A. First name is Andrew, last name is Whowell, W-h-o-w-e-l-l.

Q. What's your business or occupation?

A. I'm a police officer, the Village of Arlington Heights.

Q. For how long have you worked for the Village of Arlington Heights?

A. For approximately eight years.

Q. How old are you?

A. I'm 37.

Q. What did you do before working as a police officer for the Village of Arlington Heights?

A. I was a police officer for the City of Park Ridge for approximately two years, and prior [4] to that I was a police officer with the Village of Bartlett for approximately one year.

Q. Where is Bartlett?

A. Bartlett is a suburban community right outside of Elgin, Illinois.

Q. Why did you leave Bartlett?

A. Just job opportunities, career advancement.

Q. Why did you leave Park Ridge?

A. Same reasons.

Q. What's your present assignment in Arlington Heights?

A. I'm currently assigned as a criminal investigator to the criminal investigation department.

Q. What does it mean to be a criminal investigator?

A. Conduct all of the routine follow-up investigations into any matter that requires the attention or anything of follow-up nature.

Q. Are you familiar with the statutes of the State of Illinois?

A. Yes.

Q. Are you familiar with the ordinances of [5] the Village of Arlington Heights?

A. Yes, sir.

Q. Back in April of 1994, were you an Arlington Heights police officer?

A. Yes.

Q. And on April 19, 1994, do you recall what your assignment was?

A. Yes, I was assigned to the criminal investigation bureau of our department.

Q. Did you work alone or with a partner?

A. With a partner.

Q. Do you recall who your partner was on April 19, 1994?

A. Yes, Jerome Lehnert, L-e-h-n-e-r-t-

Q. Now, on April 19, 1994, did you have occasion to go to 8½ North Dunton Avenue?

A. Yes, I did.

Q. Why did you go there?

A. I went there basically for a two fold purpose. One to § I had an arrest warrant for an employee of Rudeway Associates as located at that location, and I also responded to that location to determine and ascertain if the company had a village business license.

[6] Q. So had you been assigned to determine and ascertain whether Rudeway had a business license?

A. Yes.

Q. Who gave you that assignment?

A. My supervisor.

Q. Who's that?

A. At the time it was Lieutenant John Fellman.

Q. Could you spell that?

A. F-e-l-l-m-a-n-n.

Q. Is he still employed by the Village of Arlington Heights?

A. Yes, he is.

Q. When did he give you that assignment?

A. I received this assignment approximately two or three days before I had received the arrest warrant for Mr. Dugo.

Q. Did Lieutenant Fellman give you this assignment verbally or in writing?

A. It was a verbal assignment.

Q. Where was he when he gave you the assignment?

A. In our office.

[7] Q. Was anybody else present when Lieutenant Fellman gave you this assignment?

A. I don't specifically recall.

Q. When he gave you the assignment, do you recall § can you tell us as best you can what he said?

A. Yes. He asked me to look into a company by the name of Rudeway & Associates. Our department had received various complaints in regards to them allegedly soliciting on behalf of area police departments for fundraisers, and Lieutenant Fellman asked me to check in to see if this was a legitimate company and if they were licensed by the Village of Arlington Heights.

Q. Now, what did you understand that assignment to be about checking into whether they were a legitimate company?

A. What would be a normal thing for me to do would be to check to see if they were licensed through the Village of Arlington Heights, if they were operating within our Village limits and to check and see what type of business they were operating. And that would just be a general inquiry I would make.

[8] Q. Well, when you went to 8½ North Dunton on April 19, 1994, what kind of business § did you have any understanding as to what kind of business Rudeway & Associates was operating?

A. Yes.

Q. And what was that?

A. They were a solicitation type firm, a fundraiser so to speak, my understanding was for area police departments.

Q. Was it your understanding that they would use telephones to make solicitation?

A. Yes, sir.

Q. Before § well, were there any laws of the State of Illinois or ordinances of the Village of Arlington Heights that you believed on April 19, 1994 related to the type of business that Rudeway & Associates was?

A. I'm not sure I understand your question.

Q. Well, was there § were there any laws of the State of Illinois that you believe that a telephone solicitation firm of the type you believed Rudeway was had to comply with?

A. There are again various requirements that they would have to go through statute to [9] register with various § attorney general that type of thing, that was my understanding. I made those inquiries to see if they had registered through the attorney general's office, if they had registered with any particular firm, and we were unable to substantiate that.

Q. Well, we'll get to that. What ordinances? You talked about having a Village of Arlington Heights business license?

A. That's correct.

Q. Back in April of 1994 or before going to Rudeway & Associates in April 19, 1994, did you review the ordinances of the Village of Arlington Heights?

A. Yes.

Q. Did you review them to see what ordinances were applicable to the type of business that you believe Rudeway & Associates was?

A. Yes, that every village § every business that operates within the Village of Arlington Heights would require to have a business license issued by the building department.

Q. Now, is there a particular ordinance that you found that contained that requirement?

[10] A. I believe the section number that was listed on the complaint or the quote LO ticket that was issued to them.

Q. Let's see if we can find the LO ticket.

A. If I'm not mistaken, that might be a copy that you have right there.

MR. FLAXMAN: Let's mark this as Exhibit 1. (WHEREUPON, said document was marked Plaintiff's Deposition Exhibit No. 1, for identification, as of 5/23/95.)

BY MR. FLAXMAN:

Q. Let me ask you to look at what's been marked as Plaintiff's Deposition Exhibit No. 1. Tell us what that is.

A. This is the LO-ticket citation that I had issued to Mr. Ricci.

Q. Was there a particular section of the Arlington Heights Village code that you cited him for having violated?

A. Yes, chapter 9 section 201 of the municipal code of Arlington Heights.

MR. FLAXMAN: Let's mark this as Plaintiff's 2. (WHEREUPON, said document was marked [11] Plaintiff's Deposition Exhibit No. 2, for identification, as of 5/23/95.)

BY MR. FLAXMAN:

Q. Let me show you what's been marked as Plaintiff's Exhibit 2. Does that contain § does Plaintiff's Exhibit 2 contain section 9-201 of the Arlington Heights Village Code?

A. Yes. I would only like to just preface, I'm not sure this is the most current section of the particular ordinance in question.

Q. Do you know if this was § what you are looking at, Exhibit 2 is the ordinance as it existed as it was in effect on April 19, 1994?

A. I'm not sure. I could not tell from just examining this particular document.

Q. Well, let's look at what's before you. Could you point out to us the language in 9 § is there language in 9-201 which requires every business in Arlington Heights to have a license?

A. Could you repeat that again.

Q. Is there language § could you point out to us where in 9-201, if you can find it in this version of the section, there is a requirement that every business in Arlington Heights have a license?

[12] A. Well, in reading section 9-201, it indicates, "it shall be unlawful for any person to conduct, engage in, maintain, operate, carry on or manage a business, occupation or activity, either by himself or through an agent, employee or partner, for which a license is required by any provision of this Code without first having obtained a license for such business, occupation or activity," and then there is a period there.

Q. Okay. Well, is there any provision of which you are aware of of the Arlington Heights Village Code which back in April of 1994 required that a solicitation type firm of the sort that Rudeway & Associates was had to have a license?

A. After I had conferred with my supervisor in regards to Rudeway & Associates, I was told after conferring with them that if they did not have a business license issued by the Village of Arlington Heights, that they should be cited based on this section.

Q. Okay. Who was your supervisor with whom you conferred about that?

A. Lieutenant John Fellman, Sergeant William Martin.

[13] Q. When did you confer with Fellman and Martin? Well, let's do it one at a time. When did you confer with Fellman about the applicability of the Arlington Heights Village Code to Rudeway & Associates?

A. That would have been on the 19th.

Q. Did you do that over the phone when you were at §

A. In person.

Q. When did you confer with Martin?

A. Same day.

Q. Who did you confer with first?

A. Basically I conferred with them together.

Q. Was Fellman the highest ranking police officer on duty at that time?

A. No.

Q. Who was?

A. I would only assume it was the chief of police.

[14] Q. Where did this conversation with Fellman and Martin take place?

A. In the criminal investigation bureau office of the police department.

Q. Where was Mr. Ricci at this time if you know?

A. I don't know.

Q. Was Mr. Ricci at the police station when you had this conference?

A. No.

Q. So you had a discussion with Fellman and Martin before you went out to §

A. That's correct.

Q. How long did that conversation take?

A. Approximately five to ten minutes.

Q. What else, if anything, did they tell you?

A. Nothing.

Q. Did you talk with Fellman and Martin about any requirement that Rudeway be registered with the attorney general?

A. Yes.

Q. What were you told about that? What was discussed about registering with the attorney general?

A. Well, this particular discussion that we had on the 19th involved the fact that I was going to be responding to Rudeway & Associates based on [15] the arrest warrant I had for Mr. Dugo, and that subsequent to me taking Mr. Dugo into custody, I was going to make an inquiry as to whether or not they were licensed to conduct business in Arlington Heights as required by ordinance. And it was then decided and it was § I indicated to Lieutenant Fellman that we would attempt to contact the head official at that company and if they were not in compliance that they would be issued an LO ticket.

Q. Now §

A. And that was done based on numerous complaints that our department had received in conjunction with their business.

Q. Did you ever personally receive any of those complaints?

A. Yes.

Q. How many?

A. I don't specifically recall. But to the best of my recollection, I would say I received between five and ten.

Q. Did you make any reports about any of those complaints?

A. No, sir, I did not complete any written documentation.

[16] Q. How did you receive those complaints?

A. By telephone.

Q. What was the nature of those complaints?

A. Citizens within the Village of Arlington Heights trying to ascertain if in fact this particular company was authorized to conduct any solicitation or funds on behalf of the Fraternal Order of Police in Arlington Heights, specifically Lodge 80.

Q. Now, is Lodge 80 § what is FOP Lodge 80 ?

A. That's Fraternal order of Police Lodge 80. That's the union that represents the sworn personnel within Arlington Heights.

Q. Are you a member of FOP Lodge 80?

A. Yes, sir.

Q. How long have you been a member?

A. Since my employment.

Q. Has FOP Lodge 80, to your knowledge, ever employed telephone solicitors to raise money?

A. No, sir.

Q. To your knowledge, have any telephone solicitors ever represented themselves as soliciting funds on behalf of FOP Lodge 80?

[17] A. I really don't know.

Q. Did you ever develop any information that Rudeway & Associates was purporting to solicit funds on behalf of FOP Lodge 80?

A. There were only allegations to that point.

Q. Did you recall § as you sit here now, do you recall the names of anybody who made those allegations, any of those allegations?

A. No, that was conferred to me. Again, I don't recall specifically any name that I personally dealt with that, but that information that I just related to you was also conveyed to me via Lieutenant Fellman.

Q. Well, as you sit here now, can you tell me whether there is any provision of the Arlington Heights Village Code of which you are aware which requires a telephone solicitation agency of the type Rudeway & Associates was back in April of 1994 to have a license?

A. I believe that Section 902 is applicable and addresses that.

Q. You mean 9-201?

A. That's correct, for a license [18] requirement.

Q. Other than 9-201 is there any provision of the Arlington Heights Village Code of which you are aware which requires a telephone solicitation business of the type Rudeway & Associates was to have an Arlington Heights business license?

A. I don't have any specific knowledge of that at this time, no.

Q. Did Mr. Lehnert know about your mission to Rudeway & Associates?

A. Yes.

Q. Was he present when you spoke with Lieutenant Fellman and Sergeant Martin?

A. To the best of my recollection, he was in the office. I don't know if he had any personal knowledge of the conversation that had taken place, because this was my particular assignment based on the arrest warrant that had been issued.

Q. Did you tell Investigator Lehnert what your assignment was?

A. I apprised him of what my intentions were once we responded to that location.

Q. Where were you when you told him what your intentions were?

[19] A. In the office of the investigation bureau.

Q. What did he say?

A. He accompanied me over there and understood what we were going to do.

Q. Did you go to 8½ Dunton Avenue in one car or two cars?

A. One car.

Q. Who drove?

A. Myself.

Q. What time did you get there, if you recall?

A. I don't specifically recall.

Q. Was it morning or afternoon?

A. To the best of my recollection, I think it would be in the afternoon. I could only tell you that it would probably help me if I could confer with the arrest sheet. You do have that on your desk here.

Q. That was my next question.

MR. FLAXMAN: Let's mark this as Exhibit 3. (WHEREUPON, said document was marked Plaintiff's Deposition Exhibit No. 3, for identification, as of 5/23/95.)

[20] BY MR. FLAXMAN:

Q. See if that refreshes your recollection. All right. Now, what was it that you wanted to say?

A. The only thing that I was going to indicate to you is that this is a copy of the general case report, at least it appears to be that. You have a document in front of you, specifically this one, that would have been the arrest sheet and that would indicate a time of arrest, and I would estimate that it would be prior to the time of arrest.

MR. FLAXMAN: Let's mark the arrest sheet then as Exhibit 4. (WHEREUPON, said document was marked Plaintiff's Deposition Exhibit No. 4, for identification, as of 5/23/95.)

BY MR. FLAXMAN:

Q. Let me show you § let's do this right. Let's show you what we have previously marked Exhibit 3. Is this the general case report concerning the § involving the arrest of Mr. Ricci?

A. Yes, sir.

[21] Q. Who prepared this Exhibit 3?

A. This was completed by myself.

Q. Now, Exhibit 4, is that the arrest slip?

A. That's correct.

Q. Who completed the arrest slip?

A. That's also myself.

Q. After looking at Exhibit 4, do you have a present recollection of about when it was that you arrived at Rude-way & Associates on April 19?

A. I would estimate the time to be approximately 3:30 in the afternoon.

Q. What kind of structure was 8½ Dunton or is 8½ Dunton?

A. I believe it's a two-story commercial building.

Q. Where did you go when you got there?

A. To the front entrance of 8½ North Dunton which is just it's a ground level that leads § there is a flight of stairs that leads up to the office area of that particular location.

Q. Did you walk up that flight of stairs to the office area?

A. Yes.

Q. What was the name on the door, if you [22] recall?

A. I don't specifically recall.

Q. Did you open the door and walk in?

A. I knocked on the door and then entered.

Q. Did somebody open the door or did you knock after § did you just open the door after knocking?

A. I recall knocking on the door and opening the door.

Q. Who was with you if anyone?

A. That would have been Investigator Lehnert.

Q. Did he go in before you or after you?

A. After me.

Q. Did either of you have drawn guns?

A. No, sir.

Q. What did you see when you got inside?

A. There was a heavyset gentleman sitting at a desk.

Q. As you sit here now, do you know his name?

A. No.

Q. Did you have a conversation with him?

A. Yes.

[23] Q. Who spoke to him, you or §

A. I did.

Q. What did you say to him and what did he say to you?

A. I identified myself as a police officer with Arlington Heights. I believe I also introduced my partner and indicated to the gentleman at the desk that I was there to speak to Mr. Dugo and also I wanted to meet with the person in charge of the company.

Q. What, if anything, did the heavyset gentleman say to you?

A. He directed me toward where Mr. Dugo's working station was and indicated that he would advise, I believe, the head official of the company that we were there.

Q. What happened next?

A. I was escorted over to the work station where Mr. Dugo was.

Q. Did Investigator Lehnert go with you?

A. Yes.

Q. When you say you were escorted, who, if anyone, escorted you?

A. The gentleman at the desk.

[24] Q. The heavyset person?

A. Uh-huh.

Q. You have to say yes or no.

A. Yes. I'm sorry.

Q. Then what happened?

A. Upon meeting and conferring with Mr. Dugo, I advised that I had a warrant for his arrest, and at that point I took him into custody.

Q. By taking him into custody, what did you do?

A. I asked him to step up from his desk. I handcuffed him.

Q. Did you handcuff him in front of him or behind him?

A. I handcuffed him with his hands behind his back.

Q. Did you double lock the handcuffs?

A. Yes.

Q. Then what did you do?

A. I believe at that particular point is where I met with Mr. Ricci.

Q. Where was Mr. Dugo when you went to meet with Mr. Ricci?

A. Mr. Ricci had walked up to Mr. Dugo's [25] work station.

Q. So Dugo was still there?

A. That's correct.

Q. Was that heavyset gentleman still there who you had seen at the front desk?

A. I don't recall.

Q. Was Investigator Lehnert there?

A. Yes.

Q. What happened when Ricci walked up?

A. Again, Mr. Ricci inquired as to who we were. We apprised him of our office. We indicated we had an arrest warrant for Mr. Dugo. I also indicated to Mr. Ricci that I was § I made general inquiries as to what type of business he had there, and I also inquired as to whether or not he had a business license from the Village of Arlington Heights.

Q. During this conversation, was Mr. Dugo present?

A. He was present at that particular point, yes.

Q. Investigator Lehnert was present also?

A. Yes.

Q. Then what happened?

[26] A. At that particular point I requested that Mr. § Investigator Lehnert escort Mr. Dugo downstairs. We had summoned a marked squad car to transport Mr. Dugo to the Arlington Heights Police Department. And that's when I § after Mr. Lehnert escorted Mr. Dugo downstairs, I continued my conversation with Mr. Ricci.

Q. Now, was the vehicle in which you had driven to 8½ Dunton the kind of vehicle in which you could have transported a prisoner?

A. Yes.

Q. So did you continue to talk with Mr. Ricci in the vicinity of Dugo's work area after Dugo §

A. As soon as he was escorted, I walked over to § Mr. Ricci walked me over to his office area.

Q. Where was that in relation to where Dugo's work area was?

A. I would describe it toward the rear portion of the office area there. It was a separate office with just one desk that was behind a closed door.

Q. Did you go through that door?

[27] A. I had § I stood in the doorway.

Q. What happened when you stood in the doorway?

A. Our conversation continued as to whether or not he had § his company had secured a business license.

Q. Did you ever tell him that, "If you are not registered with the attorney general's office," he was going to § you were going to lock him up?

A. No.

Q. Did you ever ask if he was registered with the attorney general's office?

A. Yes.

Q. Where were you when you asked him about having been registered with the attorney general's office?

A. In the doorway of his office.

Q. What did he say?

A. He indicated to me that he had been registered, I believe, with the Combined Counties Sheriff's Association which he felt entitled him to operate his business at that location, and that he would be in compliance and that that particular certificate would supersede any village ordinance [28] or licensing requirement that he might have.

Q. What did you tell him when he told you that?

A. I indicated to him that he would need to have a village license or a license issued by the Village of Arlington Heights to conduct business within the limits of Arlington Heights.

Q. Well, did you ever ask him any questions about the allegations that he had been soliciting money on behalf of FOP Lodge 80?

A. Not at that point, no.

Q. Did you ever ask him questions about FOP Lodge 80?

A. Yes.

Q. Where were you when you had that conversation?

A. That was after we transported him back to the Arlington Heights Police Department.

Q. So when you were at 8½ Dunton talking to Mr. Ricci, did you talk about anything else other than the business license?

A. Yes.

Q. What else did you talk about?

A. Made some general inquiries as to what [29] type of business he was conducting. He indicated that he was doing phone solicitation on behalf of various police departments, FOP Fraternal order of Police organizations, and that was basically the extent of our conversation.

Q. How long did you stay § after Mr. Dugo was taken away, how long did you stay at 8½ Dunton before you left?

A. I would estimate anywhere from 10 to 15 minutes.

Q. Did you look at any papers in that 10 or 15 minutes?

A. Did I specifically look at any papers?

Q. Yes. Right.

A. The only paper that I recall specifically looking at and handling was the certificate that he had from the Combined Sheriffs Association.

Q. What did you say when you saw that, if anything?

A. I indicated to him that he would still need the village license by Arlington Heights. And at that point he was searching through his personal effects in an attempt to locate that document which [30] would be the license.

Q. Was Investigator Lehnert with you at this time?

A. At the particular time that we are discussing here when I was looking at this particular document, I believe he was. He had only gone downstairs for one or two minutes and then he had come back upstairs.

Q. Did he stay in your presence after he came back from taking Mr. Dugo downstairs?

A. Yes.

Q. When you called for a marked squad car to take Mr. Dugo away, did you do that on the telephone or over the radio?

A. That was over the radio.

Q. Were you carrying a radio at that time?

A. Yes, sir.

Q. What kind of radio?

A. A Motorola hand-held radio.

Q. Was Mr. Ricci able to find an Arlington Heights-business license?

A. No, sir, he was not.

Q. What happened when he was unable to find a business license?

[31] A. I told him that based on the village ordinance requirement I requested that he accompany me to the Arlington Heights Police Department and I explained to him the procedure what was going to take place, the fact that he would be issued a citation.

Q. When you explained the procedures that would be followed, did you say anything else other than that he would be issued a citation?

A. I indicated to him that § specifically that he would be issued a citation for not having a village license. I indicated to him that we would need to go to the police department to do that. I asked him if he was in a position to

accompany me there, and he indicated that he was. And that's when he was escorted back to the police department.

Q. When you say escorted back to the police department, what do you mean by that?

A. He was transported back to the Arlington Heights Police Department.

Q. Was he handcuffed?

A. No.

Q. Why couldn't he be issued a citation at 8½ Dunton?

[32] A. Based on department policies and procedures.

Q. What is that?

A. Specifically booking and processing procedures. They go hand in hand with a person being issued one of these citations.

Q. What are the § booking and what?

A. Processing procedures.

Q. What's the booking and processing procedure for someone who is issued an LO citation for not having a business license?

A. An LO citation would require a person to post bond which would § constitutes basically a custodial arrest. The person would have to be transported down to the police department where we would fill out an arrest sheet. They would have to be issued a P number which is a personal identification number for being issued such a citation. And then there is the purpose of bond. And our department policy does not allow us to take any type of monetary bond or to issue a recognizance bond on the street. That has to be done at the police department.

Q. Is there a general order which sets out [33] this procedure?

A. I believe so, yes.

Q. Are the Arlington Heights written rules of the police department called general order?

A. Yes.

Q. Do you happen to know which number?

A. I don't know.

Q. What's a P number?

A. A P number is a personal identification number. It's a so-called quota arrest number of a defendant in the specific case.

Q. Is that used for a computer system?

A. Yes.

Q. What other kinds of violations resulted in an LO, letters L-O, citation?

A. Any village ordinance violation other than parking complaints. I believe there are even some park district ordinances that will allow a different type of citation to be issued.

Q. Is there a general order which requires that any village ordinance other than parking that result in an LO citation?

A. I don't think it's a specific general order, no.

[34] Q. Is it an unwritten policy?

A. I would say that it is a policy.

Q. How did you learn about this policy, the unwritten policy?

A. Well, the policies are dictated through correspondence in the department, not specifically general orders. It could be a memorandum or an administrative directive.

Q. Do you recall ever reading a memorandum or administrative directive saying LO citation requires posting a bond transporting to the police department?

A. Yes. There is a set procedure that's documented by the police department in the issuances of LO tickets.

Q. Just to be clear, you could not have, consistent with the policies and procedures of the Village of Arlington Heights, have issued Mr. Ricci a citation for not having a business license other than the LO citation?

[35] A. That's correct.

Q. And you could not have issued the LO citation without requiring Mr. Ricci to come to the police station?

A. That's correct.

Q. When you went to the § well, when you went to the police station with Mr. Ricci and § who else accompanied you to the police station?

A. Investigator Lehnert.

Q. Where did you go when you got to the police station?

A. Into the criminal investigation bureau office of the department.

Q. Where did you put Mr. Ricci?

A. He was placed in an interview room.

Q. Was he locked in?

A. The door does lock, yes.

Q. Does it lock all the time? Whenever that door is closed can it only be opened from the outside?

A. That's correct.

Q. Was there a reason why he was placed into a locked room?

A. It is procedure based on trying to confine people's movements within the police department for security reasons.

Q. Was Mr. Ricci free to leave the police department when you got to the police station [36] before he was processed?

A. No.

Q. What kind of paperwork did you have to fill out in connection with the LO citation?

A. There would specifically be the arrest sheet.

Q. Do you know § the arrest sheet is which exhibit if it is?

MR. KEHL: 4.

BY THE WITNESS:

A. That's 4, this particular document.

BY MR. FLAXMAN:

Q. What else had to be filled out, if anything?

A. The LO citation itself.

Q. That's Exhibit 1?

A. That's correct.

Q. Anything else?

A. A bond receipt.

Q. Anything else?

A. That would be the only paperwork that would need to be completed.

Q. Did you complete all that paperwork that you just described to us?

[37] A. I'm not sure who filled out the bond receipt. It could have been myself.

Q. How long was Mr. Ricci at the police station while this paperwork was filled out?

A. Say approximately one hour.

Q. What shift were you working that day, the day Mr. Ricci was arrested?

A. I believe I was assigned to the day shift.

Q. What are the hours of the day shift?

A. 8:30 to 4:30.

Q. Is there roll call after the 4:30 shift and before the next shift?

A. Yes, sir.

Q. Could you describe to us what roll call is.

A. Just a basic meeting between shifts and supervisors. Normally that roll call is held two times a day, and that's where general information is discussed and related to other investigators within the department.

Q. How far from where Mr. Ricci was was roll call held on April 19, 1994?

A. The adjacent room.

[38] Q. So was Mr. Ricci close enough that if he was there during roll call he could have heard parts or he could have heard roll call?

A. Yes, he could have heard parts of the roll call.

Q. Do you remember ever telling Mr. Ricci that you were going to check to see if he had a business license?

A. I don't specifically recall saying that, no.

Q. Did you ever check to see whether a business license had been issued for Rudeway & Associates?

A. Yes.

Q. When did you do that?

A. Prior to going to that location.

Q. How did you check?

A. I contacted the business department of the Village.

Q. Did you ever check to see whether § well, did you ever check to see whether Rudeway & Associates had to be registered with the attorney general?

A. I'm not sure if they are required to be [39] licensed by or registered with the attorney general's office.

Q. Did you do any checking in that regard?

A. Yes, sir, I did.

Q. When did you do that?

A. Again, prior to going to that location on the 19th.

* * *

Q. While Mr. Ricci was at the police station on April 19, 1994, did you ever tell anyone that you were concerned about how long it was taking to process him?

A. I'm sorry. Could you repeat that.

Q. While Mr. Ricci was at the police station, did you ever complain § did you ever state to any other police officer that, "It was taking too long to process Mr. Ricci. That we should hurry up and get this done"?

A. Not at all, no, sir.

[41] Q. As you sit here now, do you believe that it was taking too long § that it took too long to process Mr. Ricci at the police station?

A. No, sir.

Q. Why is that?

A. For the time frame in which he was at the police department there was no unnecessary delay in processing him or releasing him from the police department.

Q. After you got back to § after § from the time you saw Mr. Ricci at 8½ Dunton until the time that you got back to the police station, other than the radio call to get a car to pick up Mr. Dugo, did you talk with any other police officers aside from Investigator Lehnert?

A. Did I have any communication with any officers during that time?

Q. Yes.

A. Yes.

Q. Who did you §

A. That would be the other investigators at the police department.

Q. Before you got to the police department, did you talk to Lieutenant Fellman?

[42] A. No, sir.

Q. At the police department when you got back, did you talk with Lieutenant Fellman?

A. Yes, sir.

Q. Where did that conversation take place?

A. Again in the office of the criminal investigation bureau.

Q. Who else was there?

A. I don't specifically recall. I recall Sergeant Martin being there, Investigator Lehnert, myself, and there were other investigators present, because during this time was when the roll call was.

Q. Did you talk about your trip to Rudeway & Associates?

A. I had apprised him as to what transpired, yes, sir.

Q. What did you tell him?

A. I indicated to Mr. Fellman and to Sergeant Martin that in fact we had responded to 8½ North Dunton, that I had served the arrest warrant on Mr. Dugo, and that I had asked Mr. Ricci to accompany us back to the police department and that I was in the process of issuing him a citation [43] for not having a business license.

Q. What, if anything, did Mr. Fellman & Lieutenant Fellman tell you?

A. Nothing.

Q. Did you talk with § how about Sergeant Martin, did he say anything?

A. The only thing that I requested of Sergeant Martin was that § I indicated that based on the surrounding circumstances in this particular case and the fact that Mr. Ricci had been cooperative, I asked him for permission, again procedure, if he would authorize a recognizance bond for Mr. Ricci. He indicated he would in fact do that.

Q. Did you ever learn that on April 19, 1994 someone was purchasing a business license for Rudeway & Associates?

A. No. I subsequently received information that I believe Mr. Ricci had his wife respond over and make an application for that license. I'm not sure what date that was. I don't recall.

Q. You never heard a police officer say that Ricci's wife was down at the village trying to get a license right at the time you had Ricci in [44] custody?

A. I don't recall that, no, sir.

Q. Had you ever ran an arrest before for a violation of the Arlington Heights ordinance about business licenses?

A. I have been part of an arrest, yes.

Q. How many?

A. I would estimate between three and ten.

Q. Were they telephone solicitation businesses?

A. I don't recall, sir.

Q. Do you recall what happened to those charges in court?

A. In regard to Mr. Ricci?

Q. In regard to any of those other arrests.

A. I would only tell you that it would be a typical situation that if someone was issued a citation for this that if they were in compliance and in fact secured a business license that the charges would be dismissed by the village prosecutor in court.

Q. Did you ever believe that's what would happen with Mr. Ricci's case?

[45] A. Yes

Q. Did you ever see Mr. Ricci again after April 19, 1994?

A. Not to my recollection.

Q. When you were processing Mr. Ricci on April 19, '94, was it your expectation that he would go get a business license and go to court and the complaint would be dismissed?

A. Yes.

Q. Did you ever think that what you were doing was really stupid?

A. No.

Q. Why not?

A. It would appear § it's my opinion there is various reasons why the village requires a particular business to have a license, and that's for fire safety, it's for § to make sure the structure is sound. So in no way, shape or form do I think it's foolish, no.

Q. Did you have an understanding about why it is that an LO ticket that requires going to the police station is the procedure used when giving a citation for not having a business license rather than the type of citation that's used for a parking [46] ticket?

A. Well, yes. Here we are specifically dealing with a person responsible for a business, and based on the violation and the follow-up procedures, there is accountability factors to make sure that people are going to come into court, and therefore, there is an arrest sheet and that's why the department policy is that it's a custodial arrest.

* * *

Q. Did you ever tell Mr. Ricci on April 19, 1994 that it was taking longer to process him than it should have because it was roll call?

A. No.

Q. Did you ever § when you were at Rudeway & Associates on April 19, 1994, did you ever see any three-by-five index cards?

A. Yes.

[48] Q. Where did you see them?

A. They were throughout the office area at various work stations of employees there.

Q. Did you look at any of the writing that was on any of those index cards?

A. Specific cards, no, sir.

Q. Did you pick any cards up?

A. No.

Q. Did you see Officer Lehnert pick up any of those cards?

A. No, sir.

Q. What's Lieutenant Fellman's present assignment, if you know?

A. Yes. He's the commander of the patrol division.

Q. Promotion?

A. Recent promotion, yes, sir.

Q. What shift does he work?

A. He's on the day shift.

Q. Have you gotten promoted since §

A. No, sir.

Q. Let me finish the question. § since you arrested Mr. Ricci?

A. No.

[49] MR. FLAXMAN: I have nothing further.

MR. KEHL: We will reserve signature.

FURTHER DEPONENT SAITH NOT.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[title omitted in printing]

**PLAINTIFF'S LOCAL RULE
12(n) STATEMENT**

Plaintiff submits the following in response to defendants' Local Rule 12(m) statement:

Contention: 1. On April 19, 1994, there were in full force and effect the following ordinances dully enacted by the VILLAGE OF ARLINGTON HEIGHTS, Illinois:

Section 14-3001 Licensing of Businesses. The places of businesses hereinafter enumerated in Section 14-3002 shall be licensed in accordance with the provisions of this Code. The license fee for each business shall be that set forth in Section 14-3002. All businesses so licensed shall comply with the general licensing provisions of Chapter 9 of this Code, and shall comply with all ordinances of the Village of Arlington Heights relating to the use and occupancy of the premises in which such businesses are located. The Village Manager may direct appropriate Village officers to make such inspections of the places of business of said licensees as he may deem necessary from time to time for the purpose of enforcing all the applicable ordinances of the Village of Arlington Heights. Such inspections shall be in addition to those required under other provisions of the ordinances of the Village and other sections of this Code.

Section 14-3002 Licensed Businesses and Fees.

(a) The license fees for the businesses listed below shall be determined based on the size of the business operation in accordance with the following standardized calculation fee schedule:

\$100.00	under 1,000 square feet*
\$150.00	1,001-5,000 square feet*
\$300.00	5,001-12,000 square feet*
\$600.00	12,001 square feet* and over

(*square feet = the total building square footage including retail areas and indoor storage areas)

* * *

Any and all business enterprises not named elsewhere in this Code.

Section 9-201 License required. Except as otherwise provided in Section 9-202 of this Code, [exemption for double licensing], it shall be unlawful for any person to conduct, engage in, maintain, operate, carry on or manage a business, occupation or activity, either by himself or through an agent, employee or partner, for which a license is required by any provision of this Code without first having obtained a license for such business, occupation or activity. Any person violating this section shall be fined not less than Five Dollars (\$5.00) nor more than Five Hundred Dollars (\$500.00) for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Response: Agree.

Contention: 2. On April 19, 1994, RANDALL RICCI, as principle of Rudeway Enterprises, was operating a business at 8½ North Dunton, Arlington Heights, Illinois.

Response: Agree.

Contention: 3. On April 19, 1994, at approximately 3:00 p.m., Arlington Heights police officers Andrew Whowell and Jerome Lehnert entered the business premises at 8½ North Dunton to serve an arrest warrant on Daniel Dugo, an employee of Rudeway Enterprises.

Response: Agree that serving the arrest warrant was one of the reasons for the entry to 8½ North Dunton. Another reason for the entry to 8½ North Dunton was to put Rudeway Enterprises out of business. (Ricci Dep. 27, 41.)

Contention: 4. While on the business premises, ANDREW WHOWELL inquired of RANDALL RICCI as to whether RANDALL RICCI had a VILLAGE OF ARLINGTON HEIGHTS business license.

Response: Agree. Before making this inquiry, Whowell told Ricci that "if your people aren't registered with the Attorney General's office to raise funds I'm going to lock everybody in this place up." (Ricci Dep. 27.)

Contention: 5. While it had been determined by ANDREW WHOWELL previous to his entry into 8½ North Dunton that neither RANDALL RICCI nor Rudeway Enterprises had a VILLAGE OF ARLINGTON HEIGHTS business license, RANDALL RICCI proceeded to look through his office for such a license and determined that he did not have one.

Response: Agree

Contention: 6. While on the business premises of 8½ North Dunton, neither Officer Whowell nor Officer Lehnert physically searched through any of the papers or effects of RANDALL RICCI or Rudeway Enterprises.

Response: Disagree. Ricci saw Whowell inspect a 3 by 5 index card, which contained a sales lead. (Ricci Dep. 25.)

Contention: 7. Neither Officer Lehnert nor Officer Whowell entered any portion of the business premises designated as non-public.

Response: Disagree. The entirety of the business premises are non-public. (Ricci Dep. 22.)

Contention: 8. RANDALL RICCI was taken to the VILLAGE OF ARLINGTON HEIGHTS Police Department by officers Whowell and Lehnert and charged with violating VILLAGE OF ARLINGTON HEIGHTS Code of Ordinance Section 9-201.

Response: Agree.

Contention: 9. At the police station, RICCI was formally booked and placed in an interview room while a local ordinance citation and bond were prepared.

Response: Agree. Ricci was not free to leave the interview room (Whowell Dep. 36), but was under arrest. (Lehnert Dep. 13.)

Contention: 10. Upon the approval by Sergeant Martin, RANDALL RICCI was released on an I-bond.

Response: Agree.

Contention: 11. RANDALL RICCI was at the VILLAGE OF ARLINGTON HEIGHTS Police Department for only approximately one hour while he was booked, his paperwork was processed, and his bond approved and issued.

Response: Agree. The entire paperwork incident to the arrest consisted of the "LO" citation and bond receipt. (Whowell Dep. 36.)

Contention: 12. Subsequent to his arrest, RANDALL RICCI'S wife procured a VILLAGE OF ARLINGTON HEIGHTS business license.

Response: Disagree. Ricci's spouse secured the business license while Ricci was in custody. (Ricci Dep. 36.) At all times relevant, Whowell's expectation was that as a result of being arrested, plaintiff would obtain a business license and the charges would then be dismissed. (Whowell Dep. 44.)

Contention: 13. The charge against RANDALL RICCI for violating Section 9-201 was dismissed after it was established that Rudeway Enterprises had, in fact, subsequently obtained a business license.

Response: Agree.

ADDITIONAL MATERIAL FACTS

1. Plaintiff is the principal of a telemarketing firm that sells advertising and raises funds for a charitable organization. (Ricci Dep. 7-8.)
2. In April of 1994, plaintiff's business was located at 8½ Dunton in Arlington Heights, Illinois. (Ricci Dep. 9.)

3. At that time, the firm was selling advertising in the Combined Counties Police Association's newspaper and publication, *The Illinois Police and Sheriff News*. (Ricci Dep. 10.)
4. In April of 1994, the Arlington Heights police department began to receive complaints about telephone solicitations being conducted by plaintiff's business. (Fellman Dep. 10.) The matter was assigned to defendant Whowell, an Arlington Heights police detective. (Fellman Dep. 10.)
5. On April 19, 1994, defendant Whowell went to plaintiff's place of business. (Whowell Dep. 7.)
6. The ostensible purpose of the trip was to execute an arrest warrant on one of plaintiff's employees. (Lehnert Dep. 4.)
7. The underlying purpose of the mission to Rudeway Enterprises was to gain entry into plaintiff's place of business to acquire some evidence that could be used to shut down the the operation. (Ricci Dep. 27, 41.)
8. While in the non-public area of plaintiff's place of business (Ricci Dep. 22), Whowell walked around "exploring" and examined at least one document. (Ricci Dep. 25.)
9. After entering plaintiff's place of business, Whowell learned that plaintiff's business was wholly in accord with Illinois statutes. (Ricci Dep. 37.)
10. It is the official policy of the Village of Arlington Heights for its police officers to make full custodial arrests for violations of the fine-only business license ordinance. (Fellman Dep. 36.)
11. Arlington Heights authorizes its police officers to issue citations, without requiring a full custodial arrest, in ordinance violation cases involving parking tickets, (Fellman Dep. 18.)

12. Arlington Heights maintains its full custodial arrest policy in ordinance violation cases involving business licenses because administrative convenience. (Fellman Dep. 32.)
13. At all times, the arresting officers knew that the ordinance violation charge against plaintiff would be dismissed when he went to court. (Whowell Dep. 44.)
14. The stress of the arrest exacerbated plaintiff's preexisting psychological problems with depression and lack of self-esteem. (Ricci Dep. 51.)

/s/ Kenneth N. Flaxman
an attorney for plaintiff